

3-year period. Table 1 shows that no San Diego monitor had a design value greater than 0.120 ppm for the period 1999–2001. Table 1 also shows that only 3 exceedances of the NAAQS occurred during this period: the 0.135 ppm concentration recorded at Alpine on May, 8, 2001; the 0.141 ppm concentration recorded at Escondido on September 30, 2001; and the 0.135 ppm concentration recorded at Overland/San Diego on September 30, 2001. Thus, even assuming (as the commenter mistakenly does) that all values above 0.120 ppm are exceedances of the NAAQS, the San Diego area would have attained the standard during this period.

*Comment 3:* Any emission source exceeding its permitted NO<sub>x</sub> emission limit by even 0.1 ppm would potentially be subject to a Notice of Violation. This same standard should be applied to the analysis of ambient ozone data.

*Response:* We determine an exceedance of the NAAQS according to our regulations and established policies, as summarized in response to Comment 1 above, not by analogy to a local air agency's application of its rules. Moreover, the San Diego County Air Pollution Control District (SDCAPCD) has indicated that the District applies to its compliance determinations the same significant digit interpretation and rounding conventions that we use for the NAAQS.<sup>2</sup>

*Comment 4:* The commenter expressed concern that the District is already acting to relax new source review (NSR) requirements to become effective when EPA redesignates the area to attainment. Given that the District does not yet have either an approved maintenance plan for the 1-hour ozone NAAQS or an approved attainment plan for the 8-hour ozone NAAQS, this relaxation is premature.

*Response:* The proposed relaxation is consistent with the Clean Air Act and EPA policy, which provide that the Prevention of Significant Deterioration permitting program may replace the NSR program when an area is redesignated to attainment.<sup>3</sup> EPA agrees with the commenter that a provision for continued offsets would be beneficial in positioning the area to attain expeditiously the 8-hour ozone NAAQS, and we believe that retention of the offset provisions could also contribute

toward attainment of the fine particulate matter (PM–2.5) NAAQS in San Diego County. Consequently, EPA supports the SDCAPCD's intention to retain an offset requirement for purposes of State law, although such retention is not federally mandated.

### III. Final Action

No comments were submitted that change our proposed finding. Under CAA section 181(b)(2)(A), we are therefore finalizing our finding that the San Diego area has attained the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2001.

### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely determines that the San Diego area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. As such, the action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely

makes a determination based on air quality data, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's final action because the action does not require the public to perform activities conducive to the use of VCS. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 9, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02–26991 Filed 10–22–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[CA 082–FOAb; FRL–7397–6]

### Withdrawal of Direct Final Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On August 23, 2002 (67 FR 54580), EPA published a direct final determination that the San Diego area had attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The

<sup>2</sup> "San Diego APCD Staff Responses to EHC Comments on EPA's Finding of Attainment." This document is included in the docket for this action.

<sup>3</sup> "Generally, the requirements of the part D NSR permitting nonattainment program will be replaced by the PSD program once an area is redesignated to attainment \* \* \* General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992 (57 FR 13564).

direct final rule stated that if adverse comments were received by September 23, 2002, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a timely adverse comment and is, therefore, withdrawing the direct final approval. Elsewhere in this issue EPA addresses the comments in a final action based on the parallel proposal also published on August 23, 2002 (67 FR 54601). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published on August 23, 2002 (67 FR 54580), is withdrawn as of October 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, EPA Region IX, (415) 972-3957 or [jesson.david@epa.gov](mailto:jesson.david@epa.gov).

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 9, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02-26989 Filed 10-22-02; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR 1002

[STB Ex Parte No. 542 (Sub-No. 9)]

#### Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—Policy Statement

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Policy statement.

**SUMMARY:** The Surface Transportation Board (Board) clarifies the scope of its rule assessing a fee for filing an appeal to a Surface Transportation Board adjudicative decision or a petition to revoke a notice of exemption as including all forms of appeal from all types of adjudicative decisions on the merits. This fee applies to petitions to revoke and petitions to reject, even where the petitioning party has not had an earlier opportunity to present its views to the Board.

**DATES:** This policy statement is effective October 23, 2002 immediately.

**FOR FURTHER INFORMATION CONTACT:** Anne K. Quinlan, (202) 565-1727. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), federal agencies are obliged to establish fees for specific services provided to identifiable beneficiaries. Office of Management and Budget (OMB) Circular No. A-25 contains guidelines for agencies to apply in assessing and collecting those fees.

Pursuant to the IOAA and Circular No. A-25, the Board established a fee item, at 49 CFR 1002.2(f)(61), covering “Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).” The \$150 fee, which recovers only a small portion of the costs incurred in handling these types of matters, was proposed to apply to “most appeals to the Board’s decisions.” To illustrate some examples, the Board stated:

The fee would cover the following types of appeals: (1) An appeal of right to an initial decision as set forth [at] 49 CFR 1115.2; (2) a petition for administrative review as set forth [at] 49 CFR 1115.3; (3) a petition to reopen an administratively final decision as set forth in 49 CFR 1115.4; and (4) a petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).

*Regulations Governing Fees for Service*, STB Ex Parte No. 542 (STB served Apr. 4, 1996), at 8–9.

In a different phase of the 1996 rulemaking proceeding in Ex Parte No. 542, some parties asked us not to apply fee item 61 to petitions to revoke filed in exemption proceedings in which the carrier seeking a license has already paid a fee, arguing that any expenses borne by the agency to consider the petition to revoke should already have been built into the fee paid by the carrier seeking the license. We rejected the argument and explicitly found that “the costs for administrative appeals are [not] included in the costs for the initial proceeding. \* \* \* Our costs for a proceeding do not include costs for staff time expended beyond issuance of the initial decision. \* \* \*” *Regulations Governing Fees for Service*, 1 S.T.B. 179, 202 (1996) (1996 Fee Update). The Board confirmed this ruling in denying a further request for reopening. *Regulations Governing Fees for Service*, 1 S.T.B. 883, 886 (1996), *aff’d sub nom. United Transp. Union-Illinois Legislative Bd. v. STB*, No. 97-1038 (D.C. Cir. Nov. 10, 1997), 1997 U.S. App. LEXIS 37560.

This matter apparently continues to produce some uncertainty, and we therefore wish to make it clear that fee item 61 was always intended to apply to petitions to revoke or to reject exemptions, even when the party has

not had an earlier opportunity to present its views to us. As we indicated in our prior decisions, these appeals and petitions generate substantial work on our part—far more than is reflected by the nominal fee charged—and the costs have never been covered by the fees paid with the initial filing. Therefore, under the IOAA, we are obliged to establish a fee for these specific services provided to identifiable beneficiaries. Of course, as we stated in adopting fee item 61, any party for whom the nominal filing fee poses a hardship may seek a waiver of the fee in an individual case.

We do not propose a new rule or policy here, as we are simply confirming that we have always considered fee item 61 to cover appeals and petitions to revoke or reject an exemption, even when the petition is the filer’s first opportunity to inform us of the filer’s views. For that reason, we do not seek public comment on this announcement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: October 16, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 02-26965 Filed 10-22-02; 8:45 am]

**BILLING CODE 4915-00-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 101802A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 Pacific halibut bycatch allowance specified for the yellowfin sole fishery category.